



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Engineering & Environment, Inc.

**File:** B-271868.3

**Date:** September 3, 1996

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J. Randolph MacPherson, Esq., Sullivan & Worcester, for the protester.

Al Reisz, for Reisz Engineering, an intervenor.

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## DIGEST

Protest against exclusion of protester's lower-rated, lower-priced proposal for environmental support services from revised competitive range is denied where the relative weaknesses in, and risks associated with, protester's proposed approaches to sample task requirement and professional staffing were such that the proposal was less advantageous than the proposals included in the revised competitive range and lacked a reasonable chance for award.

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## DECISION

Engineering & Environment, Inc. (EEI) protests the Department of the Army's award of a contract to Reisz Engineering under request for proposals (RFP) No. DABT02-95-R-0002, for environmental support services at Fort McClellan, Alabama. EEI challenges the agency's exclusion of its proposal from a revised competitive range.

We deny the protest.

## BACKGROUND

The RFP, a 100-percent small business set-aside, contemplated award of a fixed-price requirements contract under which delivery orders would be issued for individual environmental engineering and remediation tasks, for a base period (the remainder of fiscal year 1996) and 3 option years. Award was to be made to the

offeror submitting the proposal most advantageous to the government, that is, "[a] proposal that offer[s] value in meeting the requirements--quality performance with acceptable risk at a fair and reasonable price." The solicitation provided for evaluation of "technical/managerial acceptability" and cost (price), stating that technical/management was "somewhat more important" than cost, but that cost would increase in importance as the quality differences between proposals decreased. With respect to cost, the RFP listed estimated hours for various required labor categories, for which offerors were to provide unit and extended prices, and stated that the evaluation would include consideration of cost reasonableness, total cost, and distribution of cost throughout the life of the contract. With respect to the technical and management factors, the agency's source selection evaluation plan (SSEP) provided for point scoring proposals; 700 of the overall 1,000 points were available under the technical factor (including 450 points for an offeror's response to a required sample task) and the remaining 300 points were available under the management factor. At issue here is the evaluation of EEI's proposal under (1) the technical subfactor for comprehension of the sample task requirement and, specifically, the subfactor element for implementability of the sample task solution (worth 50 weighted points, and the fourth most important sample task subfactor element), and (2) the management subfactor for compensation plan for professional employees (worth 10 weighted points, and the least important management subfactor).

Eleven proposals were received by closing time; seven--including EEI's and Reisz's--were included in the initial competitive range. Following discussions, the Army requested best and final offers (BAFO). After evaluation of BAFOs, the contracting officer reduced the competitive range to four proposals; EEI's proposal was excluded.<sup>1</sup>

EEI's BAFO offered the lowest price (\$1,579,370), but the Army determined that in a number of areas EEI's proposed technical/management approach was either less advantageous and/or posed a greater risk than the approaches in the revised competitive range proposals. Among the areas of concern were (1) EEI's failure to provide adequate detail with respect to its sample task plan to implement tank removal and disposal, and (2) EEI's failure to propose professional salaries and a per diem/travel allowance sufficient to assure the delivery of uninterrupted high quality work. Although only 21 points separated the proposals, the contracting officer found that "[t]he true difference was that Reisz submitted an excellent proposal as compared to EEI's satisfactory proposal." As a result, EEI's proposal was eliminated from the revised competitive range on the basis that it did not have a reasonable chance for award compared to the four superior proposals included in

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<sup>1</sup>The total evaluated scores for the offerors in the revised competitive range ranged from Reisz's 922 points to 938 points; EEI's proposal received 901 total points.

the range, all of which presented little or no technical/management risk and had realistic prices. In making the award decision, the contracting officer essentially determined that the four revised competitive range proposals were technically/managerially equal, and thus made award to Reisz on the basis of its low price (\$1,900,974). EEI's protest ensued.

EEI argues that its proposal was technically/managerially equal to Reisz's, and therefore should not have been eliminated from the revised competitive range. Had its proposal been included, EEI concludes, it would have been in line for award based on its lower price (compared to Reisz's).

The evaluation of proposals and the determination of whether a proposal is in the competitive range are principally matters within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best method of meeting them. Advanced Sys. Technology, Inc.; Engineering and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. Hence, it is not the function of our Office to evaluate proposals de novo; we will not disturb a competitive range determination absent a clear showing that it was unreasonable or in violation of procurement laws or regulations. Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273.

Based on our review of the protest record, including the record of a hearing conducted by our Office,<sup>2</sup> we find some questionable areas of the technical evaluation—with respect to the sample task activities of cleaning and stenciling the tank and testing the tank for structural integrity—where, although the agency found that only EEI's proposal lacked sufficient detail and was otherwise lacking, in fact EEI's and Reisz's proposals appear to contain similar detail and types of information. However, our review indicates that the agency has reasonably determined that, in other respects, EEI's proposal was less advantageous than the proposals included in the revised competitive range, such that EEI lacked a reasonable chance for award. We discuss some areas of the evaluation below.

#### SAMPLE TASK

EEI challenges the Army's evaluation of responses to the sample task requirement. In this regard, offerors were to propose an approach to the excavation and remediation/disposal of contaminated soils—i.e., soils with a total petroleum hydrocarbon (TPH) concentration above 200 mg/kg—at a site near the flight line on an Army air field and adjacent to a hangar, described as containing leaking fuels

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<sup>2</sup>The hearing commenced with a video teleconference (with references indicated in videotape (VT) time), and it concluded with a telephone conference (with references indicated in audiotape (AT) side).

from a 20,000 gallon underground storage tank that had been taken out of service. The sample task further required the transportation of the excavated tank, soils, and other wastes to the installation's Defense Reutilization Management Office for ultimate disposal by the Army. The RFP advised offerors that their proposals "must provide evidence that you comprehend the scope of support and services that you will be required to provide for [t]he sample task" and indicate an "ability to assess problems, to develop recommendations, and to implement those recommendations in an effective and efficient manner."

During discussions, the Army issued EEI an item for negotiation (IFN) on the implementability of its sample task approach, as follows:

"The offeror should address a plan for tank removal and disposal, inspection of the tank for structural integrity, and planning and coordination of excavation activities. The tank vapors should be monitored prior to tank removal. There should be some presentation of systems modification at various stages in the project where uncertainties may require this."

The Army determined that EEI's subsequent BAFO response "did not address this negotiation point in sufficient detail to allow the committee to fully assess [the] implementability" of its proposed approach. In this regard, the agency stated at the hearing that it viewed EEI's removal/disposal plan as lacking in detail and procedure, particularly in the area of planning for contingencies, *i.e.*, changing conditions occurring during the removal/disposal process, and as relatively less advantageous than Reisz's proposed approach. Specifically, the agency viewed Reisz's proposal as including more detail and proposed procedure in such areas as monitoring the tank vapor state for changed conditions, notifying appropriate agency and state officials of the existence of any gross TPH soil contamination levels, shoring up of the adjacent hangar if necessary, and providing for any ground water encountered in the excavation. VT 1:32:32-1:59:36; AT, side 2.

#### Monitoring Tank Vapors

EEI maintains that its proposal was similar to Reisz's with respect to monitoring the tank vapors for flammable/combustible gas. Specifically, EEI states, it proposed to "regularly test" both the excavation area and tank atmosphere with a combustible gas indicator until the tank had been removed from both the excavation and the site. EEI further notes that it specifically provided that "[r]eadings of 20 percent or less of the lower flammable limit will be obtained before the tank is considered safe to remove from the ground" and that it would retest the tank after lifting it from the pit.

The Army responds that, although both proposals provided for testing of the tank vapors, Reisz's indicated that Reisz would closely monitor the tank vapor state to ensure that it had not changed, i.e., that it remained below the explosive limit. AT side 2. Specifically, Reisz provided that testing of the tank atmosphere and excavation site would be "performed prior to the start of each work day and hourly thereafter"; that its "safety and quality assurance manager will be responsible for assuring that organic vapor concentrations remain below the lower explosive limit of 19 percent"; and that "[c]onsistent readings of 19 percent or less of the lower explosive limit will be recorded before the tank is considered safe to remove from the ground." On this basis the agency determined that Reisz's proposal was more advantageous than EEI's.

The agency's determination was reasonable. Reisz's plan for hourly testing, having one person specifically responsible for "assuring" that vapor concentrations do not exceed a lower explosive limit of 19 percent, and requiring "consistent" readings below the lower explosive limit before the tank is considered safe to remove from the ground, reasonably indicated an approach to monitoring the tank that would be more likely to assure that the vapor state remains below the explosive limit. In our view, the agency reasonably could view such a detailed and intensive program of close monitoring of the tank as superior to EEI's more general proposal to "regularly test" the area and tank.

#### Monitoring TPH Levels

EEI argues that its proposal was similar to Reisz's in the manner in which it provided for the monitoring of TPH soil contamination levels (by means of organic vapor analyzer readings). As noted by the agency, however, Reisz's proposal provided not only for taking soil readings, but also for communicating information on any gross TPH contamination--(i.e., beyond the 200 mg/kg value specified in the sample task as acceptable for backfilling)--to the appropriate agency and state officials. VT 1:56:54. In this regard, Reisz's proposal stated that:

" . . . [i]f gross [TPH] contamination is noted at the stated or imposed limits . . . the project manager will notify the contracting officer's representative and directorate of environmental management [at Fort McClellan] immediately that further investigative work is needed. The Alabama Department of Environmental Management will be notified within 24 hours of the discovery."

EEI's proposal did not contain a similar notification provision. This notification approach, not found in EEI's proposal, further supported the agency's determination that Reisz's proposal was superior in the area of contingency planning.

## Shoring and Ground Water

As discussed at the hearing, shoring was another area in which the agency viewed Reisz's proposal as superior to EEI's. VT 1:45:52. As acknowledged by EEI in its comments on the agency report, Reisz's proposal provided that it would "[s]hor[e] the adjacent structure foundation [i.e., the hangar] . . . if the foundation's integrity is in question." In contrast, EEI's proposal did not provide for such shoring. Finally, in the area of contingency planning, the agency viewed Reisz's discussion of ground water as a further indication of the superiority of its proposal. VT 1:56:10. EEI denies that its proposal is significantly inferior to Reisz's in this area, noting that, like Reisz, it provided for measures such as plastic sheeting and berming to control ground water run off. However, Reisz's proposal also discussed the documentation and pumping of any ground water that might be encountered.<sup>3</sup> Again, we believe that the agency reasonably determined that Reisz's greater attention to detail made its proposal more advantageous in this area.<sup>4</sup>

The primary purpose of a sample task requirement is to test offerors' understanding of the technical requirements of the contemplated contract. See Fluor Daniel, Inc., B-262051; B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241. In view of Reisz's more detailed and comprehensive discussion of its sample task approach and, in specific, its greater attention to assuring safe operations, we conclude that the Army could reasonably evaluate Reisz's proposal as demonstrating a greater understanding of

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<sup>3</sup>For example, Reisz noted that:

" . . . [I]n the unlikely event that ground water or free/floating product is encountered in the tank excavation, pumping may generate phase-separated material. If this occurs [Reisz] will recover free product for resale if practicable. Non-hazardous waste generated during the project will be recycled whenever practicable. Waste disposal for non-recyclables will be conducted on a daily basis, and [an] approved disposal location will be utilized."

<sup>4</sup>We also note that, at the hearing, the agency cited Reisz's approach to plugging holes in the tanks as an additional area where Reisz's proposal was superior. AT side 2. Although EEI questions the agency's position on the basis that both proposals discussed plugging or capping all accessible holes in the tank, our review of the proposals indicates that Reisz's proposal went beyond the plugging of accessible holes, providing in addition for the plugging of corrosion holes. In this regard, the American Petroleum Institute Recommended Practice No. 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks," referred to by the protester, recommends the plugging of both accessible holes and corrosion holes in underground storage tanks.

the technical requirements and, on that basis, find EEI's proposal to be technically inferior to Reisz's.<sup>5</sup>

## PROFESSIONAL STAFFING

EEI's BAFO also was evaluated as less advantageous than Reisz's in the area of staffing. In this regard, offerors were to describe their (1) management approach and understanding of the contract requirements, (2) "ability to provide uninterrupted high quality work," and (3) compensation plan, "setting forth salaries and fringe benefits proposed for the professional employees who will work under this contract." In addition, the RFP incorporated by reference the clause at Federal Acquisition Regulation (FAR) § 52.222-46, Evaluation of Compensation for Professional Employees, which provides for an assessment of offerors' ability to provide uninterrupted, high-quality work, considering the realism of the proposed professional compensation and its impact upon recruiting and retention. The FAR provision specifically provides that the "compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives." The FAR provision cautions that "[p]rofessional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements."

During discussions, the agency issued EEI the following IFN:

"The offeror does not describe a connection between pay levels and providing uninterrupted quality of work. Quality of work is contingent on a variety of reasons other than pay, e.g., management, location, benefits. Since the offeror plans to

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<sup>5</sup>We further note that the agency has expressed concern that EEI's original proposal contained many typographical errors and misspellings. Although these errors were corrected in EEI's BAFO and the firm was not downgraded in this regard, the agency maintains that because it will depend on the quality of the data and written reports generated by the contractor during the performance of this environmental support services contract, similar problems in this regard could result in additional costs for the government if checking the accuracy of data and correcting reports becomes necessary. The agency notes that none of the other proposals exhibited a corresponding inattention to detail. This was a proper basis for comparing the relative merits of the proposals. See Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333 ("sloppy proposal" that reflected a "casual approach" a proper consideration for evaluation).

recruit for the project on site, there is no guarantee that he will be able to find and retain employees to provide uninterrupted high quality work for the duration of the project."

In addition, the agency issued the following two related cost IFNs to EEI on professional staffing:

"Concern if the contractor can get the professional staffing at the hourly rates provided in the proposal. Does contractor intend to hire these employees locally."

"No cost for travel and per diem identified."

In its BAFO, EEI stated that it "will establish a full service office at Anniston, Alabama [location of Fort McClellan]" and "[e]mployees will be hired locally." EEI explained that it "propose[d] to staff the [Fort] McClellan office with 12 full-time positions," with its "home office . . . provid[ing] personnel to fill 5 positions, i.e. 35 percent of the staff requirements of the project office." The protester further explained that "t]he project manager will activate the recruiting program upon arrival at site"; "[t]he recruitment will continue and 5 to 8 positions will be filled within 60 days after contract award to attain the 75 percent staffing level"; and "[t]he remaining positions [will be] filled as needed in response to temporary or sudden workload fluctuations, with the support to be provided by the subcontractors identified in the proposal."

EEI also revised its proposed hourly wage rates and stated that it planned to use a salary structure with starting salaries equivalent to GS-11, senior level salaries equivalent to GS-12, and the project manager's salary equivalent to GS-13. With respect to per diem/travel costs, EEI added a BAFO line item for \$1,000 (per year) to the RFP's price schedule, and designated it "travel in accordance with [federal travel regulations] procedures." EEI explained in its BAFO that the "[e]stimated travel cost is included in the bid schedule," and that "[a]ll travel cost will be charged in accordance with government regulations." EEI claimed that its compensation practices would be "consistent with the requirements outlined in FAR § 52.222-46," and stated that it did "not anticipate a problem in providing uninterrupted high quality work."

The Army concluded that EEI's proposal to hire 65 percent of its work force locally—interpreted as within a 30-mile radius of Anniston—posed a significant performance risk. The agency questioned EEI's ability to recruit and hire the highly educated and experienced personnel required by the RFP for performance of the contract—e.g., engineers and geologists required to possess bachelor of science degrees and 3 to 5 years experience at a minimum—from the local area around Fort



McClellan, a post scheduled for closure within 3 years, and thus unable to offer long-term employment opportunities, at the wages and per diem/travel costs proposed by the protester.

In this same connection, the Army evaluated EEI's proposed salary rates as unrealistically low. While EEI indicated in its BAFO that its proposed salaries were based on the GS pay scales provided for in the solicitation as the equivalent rates for federal hires under the Service Contract Act, and which were used by the government in developing its independent government estimate (IGE), the agency's cost evaluation committee noted that the proposed price of EEI's proposal was \$418,300 lower than the IGE. The evaluators compared the IGE labor rates to EEI's rates and determined that the significant difference between the two was that the IGE rates included per diem costs, while the protester's rates did not. VT 2:15:23. (Essentially, the IGE rates were based on the assumption that the professional staff positions would not be available locally, and that payment of a per diem thus would be necessary.) In this regard, the evaluators determined that, even without considering travel costs, the line item of \$1,000 per contract year for per diem/travel which EEI added in its BAFO was understated with respect to the likely per diem, estimated to be at least \$336,920 (based on a rate of \$85.00 per day, or \$10.62 per hour, multiplied by 31,725 total estimated hours for the technical positions for the 4 contract years. VT 2:20:10). The agency concluded that the protester's professional wage rates were unrealistic because they did not include per diem and per diem was not otherwise provided for in sufficient amounts elsewhere in the proposal. In addition, the evaluators noted that EEI proposed the lowest wage rates of the seven offerors in the initial competitive range for 11 of the 13 required technical positions. VT 2:11:33. This comparison further indicated to the agency that EEI's proposed compensation plan was unrealistic.

The Army reportedly expected EEI to respond to the IFNs in this area with a detailed justification of its staffing approach, indicating, for example, that the firm had completed a market survey to determine the availability of the personnel needed to perform the contract. EEI did not do so, and the agency believed this called into question the firm's ability to assure the delivery of uninterrupted, high quality work, creating a significant management risk. In this regard, the agency reports, if the required positions cannot be filled, or if they are filled with less qualified personnel, the result could be additional cost, delays, poor performance, and unmet regulatory deadlines.

EEI argues that its intention to hire staff locally was limited to only 37.5 percent of the professional staff (or two to five people), not the 65 percent assumed by the Army. According to the protester, this should have been evident to the agency from (1) EEI's proposal to transfer five home office personnel to the project office, (2) the areas of work that would be performed by EEI and its subcontractors, and (3) the additional EEI home office personnel who would be available to the project.

According to the protester, the Army should have known that, at most, EEI was planning to recruit only 50 percent of the project office staff, and that three of the staff to be hired were nonprofessional staff, none of which would be difficult to obtain. As for the remaining professional staff to be hired, EEI contends that a market survey was unnecessary because of the proximity of the large urban centers of Atlanta, Georgia; Birmingham, Alabama; and Huntsville, Alabama, each of which is located within 100 miles of the Fort McClellan/Anniston area, since there is no shortage of the required specialized technical personnel in those markets.

As for its proposed staff salaries, EEI maintains that the evaluators' conclusion that the rates were unrealistic is based on an incomplete comparison of EEI's and Reisz's BAFO prices. According to the protester, although EEI's unit labor prices were lower than Reisz's for 11 of the 13 professional staff labor categories, for 5 of the 13 categories the offerors proposed virtually identical prices; for 3 more categories EEI's prices were lower because of Reisz's reliance upon an "overpriced large business subcontractor"; and for 3 of the remaining 5 categories, EEI already had on its staff, or under subcontract, the professional staff personnel at the prices proposed. As a result, EEI maintains, the evaluators' conclusion that EEI's prices were unrealistically low is supported by the difference in proposed prices for only two labor categories--the regulatory specialist and staff scientist--and the differences were related to the cost structure and competitive pricing strategies of the two offerors, rather than the understatement of cost by EEI. With respect to per diem/travel, EEI asserts that its proposed price included more than \$183,000 in overhead to cover travel and per diem costs and that a "simple comparison" of EEI's initial proposal pricing and required cost breakdown with EEI's BAFO pricing and response to the standard cost format would have revealed this.

We find that the evaluation in this area was reasonable. First, the agency reasonably questioned EEI's ability to hire professional staff locally at the wages proposed. Although EEI challenges the agency's assumption that it had proposed to hire up to 65 percent (8 positions) of its professional staff locally, we note that in describing its plans for hiring the required professional staff, EEI's BAFO specifically stated--in sections entitled "Compensation Plan for Professional Employees" and "Staffing and Recruiting Plan"--that it intended to "staff the [Fort] McClellan office with 12 full-time positions"; its "home office [would] provide personnel to fill 5 positions, i.e. 35 percent of the staff requirements of the project office"; and the remaining "5 to 8 positions" would be recruited "at site." In addition, EEI responded to the agency's IFN on professional staffing salaries and local hiring by stating that "it will establish a full service office at Anniston, Alabama[;] [e]mployees will be hired locally," and there was no clear indication in the firm's proposal that three of the positions it stated would be recruited at site were non-professional, as the protester now contends. Moreover, the fact that the discussion in this regard appeared in the section of the firm's BAFO entitled "Compensation Plan for Professional Employees" (emphasis added) reasonably

could have led the agency to assume that the five to eight positions to be recruited were all professional positions.<sup>6</sup> Similarly, EEI's proposal did not clearly define its intended local area of recruitment as including areas as far away as Atlanta, Birmingham, and Huntsville. In these circumstances, we believe that the agency reasonably read the protester's proposal as indicating that up to 65 percent of EEI's professional staff--or as many as eight positions--would be recruited from the immediate local area of Fort McClellan in Anniston, Alabama.<sup>7 8</sup>

Further, given its reasonable determination that the professional staff would not be available locally in the Fort McClellan/Anniston area at EEI's professional staffing rates, we think the agency could reasonably view the apparent lack of any significant per diem in EEI's proposal as evidence of the unrealistic character of its staffing approach. While the protester argues that \$183,000 in the firm's BAFO overhead amount was available to cover per diem and travel costs for non-locally recruited staff, that was not explained in or otherwise apparent from the firm's BAFO; instead, the firm's BAFO specifically indicated a per diem/travel amount of only \$1,000 per contract year, significantly less than the \$336,920 in per diem the agency determined would be necessary. (The protester has not challenged the agency's estimate in this regard.) In these circumstances, we find that the agency reasonably downgraded EEI's BAFO for failure to demonstrate a clear ability to

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<sup>6</sup>Indeed, since the RFP provided for 13 categories of professional staff, the agency would have had no reason to believe that the total 10 to 13 positions the protester discussed in its BAFO as being filled from either its home office or recruitment were other than professional positions.

<sup>7</sup>The agency was not required to piece together disparate parts of the firm's proposal and compare them to the RFP in order to discern what the protester actually intended concerning its professional staff hiring. See Interaction Research Inst., Inc., B-234141.7, June 30, 1989, 89-2 CPD ¶ 15. Rather, it was the protester's responsibility to submit an adequately written proposal. See Herndon Science and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46. The protester did not do so in this area, and as a result, it must bear the responsibility for any miscommunication of its intentions that may have occurred.

<sup>8</sup>While EEI also maintains that, as claimed in its proposal, there were sufficient back-up staff resources available from its home office and its subcontractors to assure uninterrupted quality work, the agency reasonably viewed these resources as not negating its concern with the protester's intended primary method of obtaining staff, i.e., local recruitment. In our view, the agency reasonably could view the potential for delay resulting from the expected failure of EEI's proposed primary recruitment effort as representing a risk to timely, successful contract performance.

assure timely acquisition of the necessary professional staffing, either through its proposed local recruitment or through travel from other areas.

As noted above, although EEI's proposal was lower priced than Reisz's, the solicitation provided that cost was less important than technical/management considerations and it was such considerations that led the contracting officer to conclude that Reisz's proposal was a superior, "excellent" proposal (as compared to EEI's merely "satisfactory" proposal). Given the relative weaknesses in, and risks associated with, EEI's proposed approaches to the sample task requirement and professional staffing, we believe that its BAFO reasonably could be found to be sufficiently less advantageous than Reisz's proposal (the lowest-rated proposal in the revised competitive range), such that EEI lacked a reasonable chance for award notwithstanding its lower proposed price.

The protest is denied.

Comptroller General  
of the United States